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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,079	09/26/2001	Robert S. Kieval	1071,1104101	2039

20350 7590 03/11/2004

TOWNSEND AND TOWNSEND AND CREW, LLP  
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EXAMINER
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OROPEZA, FRANCES P

ART UNIT	PAPER NUMBER
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3762

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DATE MAILED: 03/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application N .

09/964,079

Applicant(s)

KIEVAL ET AL.

Examiner

Frances P. Oropeza

Art Unit

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-- The MAILING DATE of this communication appears in the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 9/26/01 (Initial Filing).
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-25 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Election/ Restriction***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-10, drawn to a method of inducing a baroreceptor signal, classified in class 607, subclass 044.
  - II. Claims 11-13, drawn to a method of inducing a baroreceptor signal, classified in class 607, subclass 044.
  - III. Claims 14-18, drawn to a method of inducing a baroreceptor signal, classified in class 607, subclass 044.
  - IV. Claims 19-24, drawn to a method of inducing a baroreceptor signal, classified in class 607, subclass 044.
  - V. Claim 25, drawn to a system for inducing a baroreceptor signal, classified in class 607, subclass 044.

Inventions I., II., III. and IV. are different methods and are therefore individual and distinct:

- Invention I. is a method of inducing a baroreceptor signal by changing the output over time,
- Invention II. is a method of inducing a baroreceptor signal by using two baroreceptor locations and alternatively activating, deactivating or otherwise modulating the activation device,
- Invention III. is a method of inducing a baroreceptor signal at a baroreceptor by activating, deactivating or otherwise modulating the activation device, and

- Invention IV. is a method of inducing a baroreceptor signal by electrically inducing a baroreceptor signal and changing the electrical signal.

Inventions I., II., III. and IV. and Invention V. are related as processes and apparatus for their practice. The inventions are distinct if it can be shown that either: (1) the processes as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). The processes of inventions I., II. III. and IV. can be practiced by another materially different system, the materially different system comprising an implantable baroreceptor activation device with a telemetry means, the telemetry means delivering the control signal from the external programming device to the baroreceptor activation device, the control signal generated as a function of the stimulus regimen, the stimulus regimen being included in the software of the external programming device.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

The Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

The Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

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application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frances P. Oropeza whose telephone number is (703) 605-4355. The examiner can normally be reached Monday through Friday from 9 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes, can be reached on (703) 308-5181.

The telephone number for facsimiles for regular communication and After Final communications is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0858.

Frances P. Oropeza  
Patent Examiner  
Art Unit 3762

*FPO*  
*2/26/04*

*Angela D. Sykes*

**ANGELA D. SYKES  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700**